

REMARKS

After entry of this Amendment, claims 35-51 are pending in the application. Claims 35, 40 and 45 have been amended by the foregoing amendment to affirmatively state that the reinforcing inserts absorb vibrations from the hollow metal tube during use. Claims 1-34 have previously been cancelled. Claims 49-51 have previously been added. Reconsideration of the application as amended is requested.

Claims 35-48 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicants' admitted prior art ("APA") in view of Thorp, U.S. Pat. No. 446,901 and Oliver, U.S. Pat. No. 2,031,384. The Applicants respectfully traverse the Examiner's rejection, noting that Thorp is nonanalogous art as defined by MPEP 2141.01(a) and further because the proposed combination of Thorp and Oliver does not teach each and every element of the claims as required by MPEP 2143 to sustain an obviousness rejection.

Section 2141.01(a) of the Manual of Patent Examining Procedure states the test for determining what is "analogous prior art" for the purpose of analyzing the obviousness of the subject matter at issue. "In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the invention was concerned." In re Oetiker, 977 F.2d 1443, 1446 (Fed. Cir. 1992). Further, "a reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, logically would have commended itself to the inventor's attention in considering his problem. Wang Laboratories Inc. v. Toshiba Corp., 993 F.2d 858, (Fed. Cir. 1993).

Thorp relates to a broom having a detachable, tubular broom handle that utilizes interior plugs at each end provided with projection engaging holes in the handle, a cap surrounding the upper end and engaged with the plug, and a flaring thimble surrounding the opposite end, adapted to cover the upper end of the broom fiber. A broom as disclosed in Thorp is an item that is used by an individual to clean a floor, it is not in any way, shape or form related to an improvement to a lacrosse handle. The solution provided by the improvement to the broom in Thorp is related to its attachability

features, not specifically to strengthening a handle at one end, nor dampening vibrations of the handle during use, nor counterbalancing the handle at the opposite end through the use of inserts. Further, the reference in Thorp is not the kind of reference that would have commanded itself to the Applicant inventors' attention when considering improvement to a lacrosse handle. Hence, the Applicants respectfully submit that Thorp is non-analogous art, and therefore should not be considered in rejecting the claims of the present invention. Removal of this ground for rejecting claims 35-48 is thus respectfully requested.

Moreover, even if Thorp were available for use as an obviating reference, which the Applicants do not concede is true, the combination of Thorp and Oliver and the APA does not disclose each and every element of the claimed invention as required by MPEP 2143. Thorp discloses a broom that consists of a tube, wherein the upper end is closed by a cap that is screwed onto the threaded end of a plug, which itself is secured by convenient means in the interior of the tube. The bottom end denotes a plug similar to the top plug. As noted on page 1, line 100, the tubular handle is therefore stiffened at each end by the interior plug and an external cap or thimble. (Emphasis Added).

Oliver discloses a ski pole includes a metal tube and a handle that is preferably formed with wood covered with leather or canvas and has the stem projecting downwardly plugging the upper end of the tube.

The admitted prior art confirms that hollow tubes were utilized in lacrosse sticks prior to the filing of the present application.

The Examiner then concludes that "it would have been obvious to use the reinforcing means shown in Oliver and Thorp with the lacrosse handle to increase the satisfaction of the player by increasing the structural strength of the handle ... and to lighten the weight by using hollow reinforcements." The Applicants respectfully disagree.

First, with regards to Thorp, it is unclear whether the interior plug (located within the tube), or the external cap or thimble (coupled outside the tube), or more likely a combination of both, provides the desired stiffening. Thus, it is pure speculation by the

Examiner that the interior plug alone would provide the required strengthening to the handle. Moreover, Thorp does not provide any information about whether the interior plug would provide counterbalancing for its attached structure at the bottom end portion. In addition, Thorp provides no information regarding whether the attachments would indeed dampen or otherwise absorb vibrations.

Further, Oliver is cited by the Examiner for the proposition that it discloses a hollow metal tube to reinforce the handle. The Applicants disagree that Oliver teaches what the Examiner proposes. As described in the claim and shown in each of the drawings, the metal tube 15 in Oliver is secured to and positioned intermediate the ends of and within the ski pole structure. Hence, Oliver does not disclose an insert located along the ends of a tubular structure that is required in each of the independent claims. The function of the reinforcing insert introduced along the middle portion of a ski pole is different than the function of introducing a pair of reinforcing inserts at the top and bottom end of a lacrosse handle. Thus, the Applicants believe that the combination of references do not teach a hollow metal tube having reinforcing inserts locked at each end of the tube that strengthen the tube to provide dampening to the handle, and counterbalance a lacrosse stick. Even if the combination of the admitted prior art and Oliver and Thorp did teach what is claimed in claims 35-48 of the present invention, which Applicants do not believe, the Applicants are of the belief that there would be no motivation to combine the references as the Examiner proposes to arrive at the present invention, nor any reasonable expectation of success in combining the references.

Further, each of the independent claims of the present invention requires that the outer structure (in claims 35-48 being the hollow metal tube) be formed of metal and the inserts be coupled at either end of the tube. Oliver's outer structure at the upper end is formed of wood covered with leather or canvas. Thus, for this additional reason, Oliver does not describe components in a manner similar enough to the claims of the present invention to be utilized as an obviating reference.

Thus, in summation, the use of Thorp as a reference to reject the present claims is in error, as it is not analogous art as required by MPEP 2141(a). Further, the combination of Thorp, Oliver and the APA does not teach what is required by the present invention as presented in claims 35-48, namely inserts being within the first end and second end of a hollow metal tube (and not within the intermediate area between the first end and second end) that act to strengthen the tube, to dampen vibrations, and counterbalance the lacrosse stick. Reconsideration of claims 35-48 is thus respectfully requested.

Claims 35-48 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicants' admitted prior art ("APA") in view of Oliver, U.S. Pat. No. 2,031,384 and Harmala, et al. U.S. Pat. No. 5,320,386. The Applicants respectfully traverse the Examiner's rejection for reasons provided in their August 6, 2007 Response and for further reasons provided herein.

Specifically, the Applicants note that the tube in Oliver is intermediate to the ends of the structure as described in the previous paragraphs, and thus a middle insert would function differently in Oliver than in the presently presented claims and does not describe inserts at either end thus not function to strengthen the ends of the handle, to dampen vibrations in the handle, and to act to counterbalance the lacrosse stick as in the present claims.

Moreover, the use of an inner shaft that extends along the entire length in Harmala does nothing to improve dampness vibration as disclose in Harmala. In fact, dampening of vibrations is accomplished in an alternative embodiment of Harmala, that being in Figure 3, which disclose the use of filler material introduced within the core of the shaft. The use of multiple inserts as in the present invention, located at opposite ends of the handle, provides the same dampening effect, but without the weight increase associated with added filler material. Thus, the presently presented claims can be distinguished from Harmala along these additional lines as well.

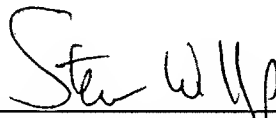
The Applicants respectfully request reconsideration of modified claims 35-48 in view of these additional remarks.

Claims 49-51 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the cited art above, and further in view of Brine et al., U.S. Pat. No. 6,752,730. The Applicants respectfully traverse the Examiner's rejections for reasons provided above with respect to each of the cited references, and note that the introduction of Brine to disclose a lacrosse head does nothing to change the Applicants' opinion that the claims are allowable over the cited prior art. Reconsideration of claims 49-51 is thus respectfully requested.

It is submitted that the amendments place the claims of the application in suitable condition for allowance; notice of which is respectfully requested. If the Examiner believes that prosecution of the application can be expedited by way of an Examiner's amendment, the Examiner is invited to contact the Applicants' attorney at the telephone number.

Respectfully Submitted,

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